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May 16, 1996

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. William F. Caton
Acting Secretary
Office of Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CC Docket No. 96-98

Dear Mr. Caton:

Pursuant to paragraph 292 of the Notice Of Proposed Rule Making in the above-referenced proceeding, Nextel Communications, Inc. ("Nextel") has enclosed a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software which contains Nextel's "Comments" in this proceeding. These Comments were filed today along with the submission of this diskette.

The diskette contains four files, each of which is part of Nextel's Comments. These files are as follows:

COMMENTS.COV --	Cover Page
COMMENTS.TOC --	Table of Contents
COMMENTS.SUM --	Summary
COMMENTS.TXT --	Text

If you have any problems with this diskette or any related questions, please do not hesitate to contact me at 202-296-8111.

Sincerely,


Lawrence R. Krevor
Director - Government Affairs

Enclosure

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MAY 16 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

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)
) CC Docket No.96-98
)
)

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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Dated: May 16, 1996

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SUMMARY

In the Telecommunications Act of 1996 ("TCA96"), Congress established a "blueprint" for unbundling the local loop by permitting all requesting "telecommunications carriers" fair and efficient interconnection with incumbent local exchange carriers ("LECs"). As a provider of Commercial Mobile Radio Services ("CMRS") and therefore a "telecommunications carrier" under TCA96, Nextel Communications, Inc. ("Nextel") files these Comments to encourage the Commission to implement the provisions of TCA96 in a manner that will maximize telecommunications carriers' access to the LEC network and thereby promote competition in all telecommunications markets.

Because CMRS providers offer competitive or potentially competitive wireless services, the Commission should recognize in this proceeding that they are not LECs. If and when a CMRS carrier's services replace a substantial portion of the landline network within a state, that CMRS carrier may be subject to regulation. Only in the event that a CMRS provider develops sufficient market power to be a bottleneck to the PSTN, should it be required to unbundle its network, permit interconnection at any feasible point on its system, and fulfill the other requirements of Section 251(c), or be subject to the requirements of Section 251(b).

In addition to properly classifying CMRS providers as non-LEC telecommunications carriers, the Commission should ensure that TCA96 is implemented in a manner that creates competitive

opportunities for all telecommunications providers. This can be accomplished by providing maximum flexibility in establishing interconnection arrangements with LECs. This flexibility is necessary not only for successful unbundling of the local loop but also for rapid deployment of CMRS services.

Finally, the Commission should use this rule making to clearly delineate its jurisdiction over CMRS rates and entry by enforcing the state and local preemption provided in Section 332(c) of the Communications Act. TCA96 did not amend or repeal that preemption. Therefore, by enforcing Congress' preemption of state and local jurisdiction over LEC-CMRS interconnection, and establishing specific federal standards, therefore, the Commission can "advance competition [and] reduce regulation in telecommunications markets," as envisioned in the NPRM.

In the Matter of)
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Implementation of the Local Competition) CC Docket No.96-98
Provisions in the Telecommunications Act)
of 1996)

3/ NPRM at para. 14.

preserve universal service to all Americans."4/ Nextel files these Comments to encourage the Commission to implement these provisions in a manner that will maximize telecommunications carriers' access to local markets, promote competition and thereby provide new and enhanced telecommunications services to all Americans.

II. BACKGROUND

Nextel is the Nation's largest provider of Specialized Mobile Radio ("SMR") and wide-area SMR services. Nextel's wide-area SMR services employ digital GSM-based technology to offer a combination of wireless telecommunications services to mobile work groups including mobile telephone, paging and dispatch services. Through its subsidiaries, Nextel currently provides these digital wide-area SMR services in, among other places, California, New York, New Jersey, Boston, Detroit, Baltimore/Washington, D.C., Chicago, Denver, Atlanta, and Seattle/Portland, and is in the process of building out systems throughout the rest of the Nation.

In 1993, Nextel's wide-area SMR services, as well as its traditional SMR services that are interconnected to the Public Switched Telephone Network ("PSTN"), were reclassified as Commercial Mobile Radio Services ("CMRS") by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").5/ As a CMRS carrier,

4/ NPRM at para. 3.

5/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993). Many traditional SMR services are not interconnected to the PSTN, and therefore do not require interconnection arrangements with a LEC. Nextel provides traditional analog SMR services -- both

Nextel's services will be subject to regulation under the common carrier provisions in Title II of the Communications Act of 1934 as of August 10, 1996.^{6/} Congress reclassified these mobile telecommunications services as CMRS in an effort to establish a new regulatory framework under which all similarly situated wireless telecommunications services providers would be regulated.^{7/} The Budget Act "replaced traditional regulation of mobile services with an approach that [brought] all mobile service providers under a comprehensive, consistent regulatory framework . . ."^{8/}

Now in 1996, Congress has encompassed CMRS carriers within the "telecommunications carrier" definition promulgated in TCA96, and has expressly excluded them from the definition of a "LEC."^{9/} As

interconnected and dispatch-only -- and interconnected, digital wide-area SMR services. Prior to the Budget Act, all SMR services -- whether or not they were interconnected -- were regulated as private land mobile radio services, thus exempting them from the common carrier provisions of Title II of the Communications Act.

^{6/} See Section 6002 (c) (2) (B) of the Budget Act, providing "any private land mobile service provided by any person before such date of enactment [August 10, 1993] . . . shall, except for purposes of section 332(c) (6) [foreign ownership limitations] of such Act, be treated as a private mobile service until 3 years after such date of enactment [August 10, 1996]." Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002, 107 Stat. 312 (1993).

^{7/} See, e.g., Second Report and Order, 9 FCC Rcd 1411 (1994) at para. 13 ("[In the Budget Act,] Congress saw the need . . . to ensure that similar services would be subject to consistent regulatory classification.").

^{8/} *Id.* at para. 12.

^{9/} 47 U.S.C. Sections 153(44) and (49). In subsection (44), Congress stated that CMRS carriers are not to be included in the "LEC" definition unless the Commission expressly determines that they should be included. See discussion, *infra*.

a result, Nextel and other CMRS carriers are entitled to request interconnection and access to unbundled network elements from incumbent LECs, and reciprocal termination from LECs.^{10/} Section 251(c) provides Nextel a potentially powerful tool for efficiently, effectively and creatively extending its interconnected mobile communications network nationwide. Nextel may enter into interconnection agreements with numerous incumbent LECs in order to provide advanced digital mobile telephone and short-messaging service in all of its existing markets as well as the rest of the country. Therefore, Nextel is filing these comments in its position as a CMRS carrier/"telecommunications carrier" entitled to request just, reasonable, and nondiscriminatory interconnection from incumbent LECs, and thereby speed the nationwide deployment of its wide-area SMR systems.

Nextel is also filing these comments to reemphasize that, as a telecommunications carrier regulated under the CMRS regulatory framework, it is not subject to state jurisdiction with regard to its interconnection arrangements with LECs. Congress preempted state jurisdiction over CMRS rates and entry in the Budget Act, and the TCA96 neither expressly nor implicitly amended or repealed that preemption. TCA96 is Congress' plan for opening the "local loop" to competition after generations of monopoly bottleneck control.

^{10/} 47 U.S.C. Sections 251 (b) and (c).

It does not revise the deregulation of the wireless marketplace -- a task accomplished just three years ago in the Budget Act.^{11/}

In implementing Section 251 of TCA96, therefore, the Commission must adopt rules and regulations that permit telecommunications carriers to negotiate any interconnection arrangement that, while technically feasible for the incumbent LEC, is the most economically efficient for its own system. Section 251 offers telecommunications carriers a "blueprint" for arriving at the most efficient interconnection arrangements with incumbent LECs. To ensure this outcome, the Commission cannot allow incumbent LECs to refuse any technically feasible network bundling or unbundling arrangements that a telecommunications carrier requests.

III. DISCUSSION

A. No CMRS Carrier Currently Meets The Definition Of A LEC Under TCA96

As a CMRS carrier, Nextel does not qualify as a LEC under TCA96 and therefore is not subject to the duties and obligations of Sections 251(b) and 251(c). In fact, Congress explicitly stated in TCA96 that "a person engaged in the provision of a commercial mobile service under Section 332(c)" is not included in the LEC definition, unless the Commission specifically finds that a particular CMRS provider is offering telephone exchange service or

^{11/} "This Act and the amendments made by this Act shall not be construed to modify, impair or supersede Federal . . . law unless expressly so provided . . ." TCA96 Section 601(c).

exchange access service.^{12/} Congress, moreover, did not intend for any CMRS carrier to be classified as a LEC. Rather, Congress allowed the Commission to so designate a CMRS carrier "if future circumstances warrant."^{13/}

The standard for the Commission to follow to determine when "future circumstances warrant" is set forth in Section 332(c)(3)(A) of the Communications Act. This section provides that when a CMRS carrier becomes a replacement for a "substantial portion of the communications within [a] State," that CMRS carrier should be regulated as a LEC.^{14/} In other words, if the CMRS carrier provides services functionally substitutable for LEC services and competition is insufficiently robust, a CMRS carrier could be treated as a LEC. Only in the unlikely event that a CMRS provider wields sufficient market power to be a bottleneck to the PSTN, should it be required to unbundle its network, permit interconnection at any feasible point on its system, and be required to fulfill the other requirements of Section 251(c), or be subject to the requirements of Section 251(b).

B. TCA96 Is Intended To Create A Menu Of Opportunities From Which All Telecommunications Carriers May Choose In Order To Establish The Most Economical And Efficient Interconnection Arrangement With Incumbent LECs And New Entrant LECs

As a telecommunications carrier, Nextel is entitled to the interconnection rights, unbundled network options, and reciprocal

^{12/} 47 U.S.C. Section 153(44).

^{13/} S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 116 (1994) (hereinafter "Conference Report").

^{14/} 47 U.S.C. Section 332(c)(3)(A).

compensation for termination and traffic that are provided in TCA96. The implementation of each of these Section 251 requirements is critical to the development of a truly competitive telecommunications marketplace. In the NPRM, the Commission properly concluded, for example, that LEC switching must be unbundled and local transport and special access must be unbundled.^{15/} Section 251(c) assures CMRS carriers such as Nextel that they can request interconnection with the LEC at "any feasible point," which may or may not encompass a point on the network that has heretofore been used for interconnection. If Nextel determines that it can interconnect with the LEC in a new and more efficient manner, Section 251(c)(2) not only permits -- but actually encourages -- such interconnection, unless the LEC can prove that it would be infeasible.^{16/}

In Section 251(c)(3), Congress has established a framework for achieving the most economic and efficient interconnection arrangements between LECs and telecommunications carriers by ensuring that telecommunications carriers, including CMRS carriers, can configure their networks in any manner that is feasible and most efficient. Nextel agrees with the Commission's tentative conclusion that it should identify a "minimum set of network elements that incumbent LECs must unbundle for any requesting

^{15/} NPRM at paras. 98, 104.

^{16/} Nextel supports the Commission's tentative conclusion that the LEC carries the burden for proving that a request point of interconnection is "infeasible." NPRM at para. 58.

telecommunications carrier."17/ The definition of "network elements," moreover, must retain sufficient flexibility to evolve along with technology. This would ensure that archaic, rigid rules do not prevent parties from implementing new interconnection arrangements and system structures as technology advances.

Nextel further agrees with the Commission's tentative conclusion that these unbundled network elements be made available to telecommunications carriers separate from the LEC's other functionalities, such as the local switch.18/ This would permit a CMRS carrier, for example, to pick and choose the services and network elements it receives from a particular LEC, enabling it to interconnect with any number of competing LECs -- both incumbent and new -- or choose only certain services from each LEC to create a CMRS network that offers customers the most efficient and economical service. Having the broadest possible selection of unbundled services and functionalities not only encourages local competition, but it also enables CMRS carriers to develop the network architecture that supports their systems most efficiently and effectively. This, in turn, enhances their competitiveness in the CMRS marketplace. Thus, Nextel supports the Commission's tentative conclusion that telecommunications carriers are entitled to access individual LEC functionalities.19/

17/ NPRM at para. 77.

18/ *Id.* at para. 86.

19/ *Id.*

To demonstrate the importance of the Commission's tentative conclusions herein, Nextel relates the following "real-world" example of arbitrary LEC rigidity. Currently, Nextel interconnects with the Southern New England Telephone Company ("SNET") pursuant to SNET's "wireless carriers" tariff to offer its digital wide-area SMR services in Connecticut. Nextel has determined, however, that it could save approximately \$100,000/year if SNET would permit it to obtain certain services under another SNET tariff under which service is currently being offered to other interconnecting non-wireless carriers.

SNET has refused Nextel's request to change tariffs because, they claim, all wireless carriers must contract for service under its "wireless" tariff. SNET also has claimed infeasibility, but it has not proven it -- particularly in light of Nextel's experiences with other LECs who have allowed Nextel to take advantage of the same cost savings under their tariffs.^{20/} To stop this kind of arbitrary discrimination, as intended by TCA96, the Commission should implement Section 251(c)(3) in a manner that maximizes the unbundling of the LEC's network and permits telecommunications carriers to choose from the LEC's menu of interconnection options to achieve their most efficient interconnection arrangement.

Once the LEC is required to provide unbundled network elements, the Commission must ensure that they are offered to all telecommunications carriers on terms that are just, reasonable and

^{20/} In other words, SNET has not shown infeasibility because Nextel has evidenced that this arrangement is being employed on similar networks. See NPRM at para. 87.

nondiscriminatory.^{21/} For example, with regard to Nextel's negotiations with SNET, not only must the Commission ensure that Nextel has access to this particular tariff arrangement, but it must also ensure that Nextel is not charged a higher price than other telecommunications carriers. Such flexibility and accompanying equity was mandated by Congress in Section 251, and if implemented appropriately, will result in a more competitive telecommunications marketplace -- in both the local market and the nationwide wireless marketplace.

C. As A CMRS Carrier, Nextel's Interconnection Arrangements Are Subject To Review And Enforcement By The Commission Under Section 332

As a "telecommunications carrier," Nextel is entitled to request from the LEC the rights provided it under Section 251. However, as a CMRS carrier, the enforcement and regulation of Nextel's rights under Section 251 are left to the Commission pursuant to Section 332 of the Communications Act. Section 332 established the framework under which CMRS carriers are regulated, a significant part of which was the preemption of state and local regulation over the rates and entry of CMRS carriers.

As a critical step in enabling a carrier to provide telecommunications services, interconnection to the PSTN is fully encompassed within the scope of preempted "market entry" regulation. Moreover, the terms and conditions upon which interconnection is provided has a significant impact on the rates charged by a CMRS provider. Therefore, Section 332(c)(3)(A)

^{21/} 47 U.S.C. Section 251(c)(2)(D).

prohibits states from regulating CMRS carriers such as Nextel's interconnection with LECs. TCA96 did not expressly or implicitly amend or repeal the state preemption set forth in Section 332. In fact, TCA96 expressly states that it "shall not be construed to modify, impair or supersede Federal law unless expressly so provided. . ."22/ Therefore, the Commission continues to retain jurisdiction over LEC-CMRS interconnection agreements.23/

This conclusion is in the public interest. It establishes a regulatory framework for LEC-CMRS interconnection that will facilitate the buildout of multi-state CMRS networks -- rather than bog down their implementation by subjecting interconnection requests to numerous state regulatory approaches and policies. Nor does it favor wireless technologies over others.24/ Rather, the differentiation merely recognizes the statutory (*i.e.*, Section 332 vis-a-vis Section 251), historical, and marketplace differences between wireline providers and wireless providers. Technology is not the lone distinction between these services, and it is those other differences that justify the regulatory distinction.

22/ TCA96 Section 601(c).

23/ TCA96 states that Section 251 is not to be construed as limiting or otherwise affecting the Commission's Section 201 authority to require interconnection by common carriers. 47 U.S.C. Section 251(i). See also Conference Report at 123 ("subsection 251(i) makes clear the conferee's intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act.").

24/ See NPRM at para. 169.

First, there are significant historical marketplace differences between CMRS services and landline local exchange services. The wireline market has been -- and still is to a great extent -- a monopoly-controlled bottleneck, with a single provider in any given area. In fact, it is this monopolized local market that TCA96 attempts to eliminate. On the other hand, the wireless industry is a competitive market, with an increasing number of providers offering competitively-priced services. It was this very competition, and the promise of even more robust future competition that led Congress to preempt state regulation of CMRS rates and entry.

Second, wireless telecommunications services are inherently interstate because they are provided without reference to state boundaries. For example, a Nextel user in Maryland could initiate a phone call to a District of Columbia ("D.C.") number. On his/her drive into work in D.C., he/she might choose to drive through Virginia into D.C. while continuing the same phone call. The call was initiated as an interstate (intraLATA) call in Maryland to D.C., remained interstate through Virginia, and ends as an intrastate communication between parties located in D.C. Given that calls such as this happen thousands of times each day, the Commission should recognize that wireless communications are inherently interstate and should not be subjected to numerous, often conflicting, state interpretations of federal law.

As an interstate provider implementing a single nationwide system, Nextel encounters numerous state regulatory agencies, each

of which may have its own interpretation of the Commission's rules for wireless services. For example, in implementing the Budget Act, which preempted state authority over CMRS rates and entry, one state has just begun to consider the application of the Budget Act's "regulatory parity" requirement to its tariffing and entry requirements even though the Commission has already resolved the issue.^{25/} Because the regulations of the Illinois Commerce Commission ("ICC") exempt cellular carriers from numerous tariff filing requirements, a Personal Communications Services ("PCS") licensee planning to offer competitive services sought the same treatment from the ICC. Rather than routinely exempting the PCS licensee, the ICC is planning to convene its own proceeding -- three years after passage of the Budget Act -- to determine whether all CMRS carriers, *i.e.*, PCS, cellular and wide-area SMRs, are the same and should therefore be subject to the same regulation -- issues previously resolved by the Commission but not put into explicit federal standards governing the permissible extent of state regulation of CMRS services.

Another example of unnecessary delays and burdens caused by state implementation of Congressional objectives is the Connecticut Department of Public Utilities' ("DPU") decision explicitly concluding that CMRS providers are not entitled to mutual compensation for the interchange of LEC-CMRS traffic, implicitly

^{25/} See Third Report and Order, 9 FCC Rcd 7988 (1994) at paras. 51 *et. seq.*, finding that all CMRS carriers are competitive or potentially competitive and therefore entitled to similar regulatory treatment.

rejecting the Commission's stated rules and policies.^{26/} These examples point out the correctness of the Commission's tentative conclusion that one set of uniform minimum federal standards, explicitly outlining Section 251 interconnection rights and obligations, would eliminate states' abilities to obstruct fair, equitable and efficient interconnection arrangements. Without such explicit federal standards for implementing Sections 251 and 252, state regulation of interconnection arrangements -- particularly those between LECs and CMRS providers -- will not facilitate Congress' goal of a competitive telecommunications marketplace.

Finally, the "regulatory parity" provisions of the Budget Act do not dictate similar regulatory treatment of wireline and wireless services in this case because wireline services and wireless services are not at present "similar" nor are they directly competitive with one another. At such time that a CMRS carrier replaces a substantial portion of the wireline network and has market power, then the Budget Act permits the imposition of regulation on that CMRS provider appropriate for local exchange-type bottleneck services.

Not only is preemption of state jurisdiction over LEC-CMRS interconnection the legally appropriate conclusion, it is the competitively appropriate conclusion. With a single standard for LEC-CMRS interconnection and a single arbiter, *i.e.*, the Commission, interpreting that standard, CMRS providers will be able

^{26/} See Draft Decision of the DPU, Docket No. 95-04-04, September 1, 1995; see also Second Report and Order, 9 FCC Rcd 1411 (1994) at para. 232

to rapidly deploy their regional and nationwide wireless services in an efficient and economical fashion. Negotiating pursuant to some 50 different sets of rules and interpretations would hinder CMRS implementation, slow the deployment of new wireless services, and thereby deny consumers access to these new products and services.

IV. CONCLUSION

Congress' decision to unbundle local loop elements and require fair, efficient and equal interconnection among all "telecommunications carriers" is a significant step towards a more competitive telecommunications marketplace. In TCA96, Congress has established the "blueprint" for this action. The Commission, therefore, must use this rule making proceeding to ensure that (1) CMRS carriers are not regulated as LECs since they are currently competing in a competitive marketplace and do not have market power; and (2) unbundling of the local loop network results in the maximum flexibility in establishing interconnection arrangements with LECs.

Once the appropriate standards are established, the Commission must ensure that states do not violate the preemption standards in Section 332 by attempting to regulate the interconnection arrangements of CMRS carriers. In the Budget Act, Congress determined that wireless services should not be subjected to varying state regulations. Because wireless carriers offer nationwide services, Congress left only minimal regulatory authority with the states. Interconnection arrangements, which are

a significant part of the rates and entry of CMRS carriers, do not fall within that minimal state authority. Therefore, because TCA96 did not change Section 332's jurisdictional mandates, the enforcement of TCA96 interconnection and reciprocal termination provisions for Nextel and other CMRS carriers remains with the Commission.

Respectfully submitted,
NEXTEL COMMUNICATIONS, INC.

By, 

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Dated: May 16, 1996

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 16th day of May 1996, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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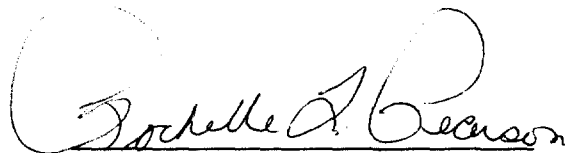
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